HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.3937 of 2006 (O&M)
Date of decision : 6.3.2007

Sandeep Ahuja **.....Appellant**

versus

M/s Thakar Dass Ahuja & Sons and Ors **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.C.Setia, Senior Advocate with
Mr.Anish Setia, Advocate for the for the appellant.

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ORDER

HEMANT GUPTA, J.

C.M.No.10092-C of 2006

For the reasons mentioned in the application, the delay of 4 day in filing the appeal is condoned, subject to all just exceptions.

R.S.A.No.3937 of 2006.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby his suit for dissolution of partnership firm, was dismissed.

As per the plaintiff, vide partnership deed dated 14.9.1976, Manohar Lal Ahuja alongwith defendant No 5 and Ramesh Ahuja and Dhanna Ram entered into a partnership. Ramesh Ahuja and Dhanna Ram retired from the firm and the firm was reconstituted by taking over new partners i.e. defendant Nos.2, 3 & 4, w.e.f. 8.12.1978. Manohar Lal Ahuja died on 2.7.1989. Plaintiff claims that he executed a Will dated 24.10.1988 by which he bequeathed property to the extent of 45% to the plaintiff and 55% in aggregate to his wife and son.

In the present suit, the plaintiff tendered his evidence in his examination in chief, but failed to present himself for the purpose of cross examination. The learned trial Court closed the evidence of the plaintiff after providing 12 opportunities to lead evidence including two last opportunities and consequently dismissed the suit. In appeal, the order closing the evidence of the plaintiff was made subject matter to challenge on the ground that the plaintiff could not appear as witness due to illness of his wife. The learned First Appellate Court found that such plea has not been substantiated by the plaintiff and dismissed the appeal.

It is not disputed that 12 opportunities were granted to the plaintiff to lead evidence, including the two last opportunities. The order of closing the evidence on account of failure to lead evidence in spite of large number of opportunities granted to the plaintiff to lead evidence, is justified. The plaintiff is not entitled to further indulgence much less at this stage.

Consequently, I do not find any illegality or irregularity in the judgment and decree passed by the Courts below, which may give rise to any substantial question of law in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

March 6, 2007
**mohinder*